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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/419,927

Applicant(s)
Sorensoen et al.

Examiner
Fozia Hamud

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1647



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above, claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) All b) Some* c) None of:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

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DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Group I (claim 1) in Paper No.6 filed on 08 June 2001 is acknowledged. The traversal is on the grounds that the invention of claim 1 (Group I) is related to the method of cytotoxic enhancement of lymphocytes of claim 2 (Group II) and the method of preparing a combination of extensin and pectin of claim 3 (Group III) and that the commonality of these claims is believed to render any required search reasonable.

This ground of traversal is not found persuasive because, as was set forth in the restriction requirement mailed on 07 May 2001 and is reiterated here, the composition comprising a pectin and extensin of Group I can be used in materially different methods, such as in the preparation of certain foods, and likewise the method for cytotoxic enhancement of lymphocytes can be practiced without the compound of invention I, such as by using other cytotoxic agents such as IL-12. Also the compound of invention I can be prepared in a materially different method other than the method of invention III, such as by using a nucleic acid encoding the desired proteins as fusions. Furthermore, a search of the prior art to determine the novelty of the composition of Group I, would **not** necessarily reveal pertinent art of the methods of Groups II and III.

The restriction requirement is still deemed proper and is therefore made FINAL.

Claims 2-3 are withdrawn from consideration by the Examiner as they are drawn to non-elected inventions.

2. Applicant's statement that "The computer readable form in this application, 09/350,206 is

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statement is inappropriate because the Serial Number for this Application is 09/419,927 and this application is related to neither Application Number 09/042,780 nor Application Number 09/350,206. Furthermore, the computer readable form for this Application, 09/419,927 complies with US sequence rules.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested "a composition comprising extensin and pectic polysaccharides".

Claim Rejections - 35 U.S.C. § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5a. Claim 1 is vague and indefinite because, it is understood that one of the embodiments of the claimed compound is that it comprises extensin alone, however, it is unclear whether the claimed combination comprises extensin in combination with pectin only (which is a pectic polysaccharide), or whether it comprises extensin in combination with all the pectic polysaccharide including pectin. In other words, pectic polysaccharides include pectin, pectic acid and pectates, and it is unclear if the claimed compound comprises all of these polysaccharides in combination with extensin or if the it comprises extensin and only pectin. Appropriate correction is required. Furthermore, the claim is

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confusing because it is not clear whether Applicant is claiming a single specific compound or a composition comprising 2 or more compounds.

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6a. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Qi et al, 02/1995.

Qi et al disclose that extensin becomes insolubilized into the cell walls of the *dicotyledonous plants* in part by pectin-extensin cross linkages, (abstract). The researchers selectively cleaved extensin from other polymers to which it was attached, by performing various solubilization, digestion and extraction techniques, (figure 2 on page 1694, column 2). Qi et al liberated several fragments and determined the content of sugar and hydroxyproline in each fragment. Thus Qi et al disclose extensin and several fragments that comprise extensin and varying amounts of polysaccharides, in particular fragment E comprises extensin and pectin, (see table 1 on page 1695, page 1698, bottom of column 2 and page 1699).

Therefore Qi et al reference anticipates all the limitations in the instant claim 1 in the absence of any evidence to the contrary.

Conclusion

7. No claim is allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia Hamud whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday, Wednesday and Thursday from 6:30AM to 4:00PM (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

Official papers filed by fax should be directed to (703) 308-4227. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Fozia Hamud
Patent Examiner
Art Unit 1647
August 09, 2001

Gary J. Kunz

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